IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

Crl.Rev.Pet.No. 391 of 2000()

CRA.143/1997 of SESSIONS COURT, ALAPPUZHA
ST.1/1995 of JUDL.MAGISTRATE OF FIRST CLASS, AMABALAPUZHA

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REVN. PETITIONER: APPELLANT/ACCUSED

GOPALAKRISHNAN
NAMBISSERY HOUSE
THAICKEL, CHERTHALA
ALAPPUZHA DISTRICT.

BY ADV. DR.P.S.KRISHNA PILLAI

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE

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1. P.V.PADMANABHA PILLAI
   ANANDA BHAVANAM
   THENNADY, CHIRAYAKAM P.O.
   THAKAZHY, AMBALAPUZHA TALUK.
   ALAPPUZHA DISTRICT.

2. STATE OF KERALA REPRESENTED BY THE
   DIRECTOR OF PROSECUTIONS
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.ASP.KURUP
BY PUBLIC PROSECUTOR SRI.C.K.SURESH BABU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRRP391/2000

ORDER ON CRL.M.P.NO.4426/2001 IN CRL.R.P.NO.391/2000

DISMISSED

25.6.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No. 391 of 2000

Dated this the 25th day of June, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced, as modified by the appellate court, to pay a fine of Rs.13,000/- and in default, to undergo simple imprisonment for one year.

2. The case of the complainant is that a sum of Rs.11,500/- was borrowed by the accused on 11.8.1994 and the impugned cheque was issued to discharge of the above liability and that the cheque when presented was dishonoured for want of funds in the account of the accused. The statutory notice sent was not replied to nor was the amount paid.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 to 3 and Exts. P1 to P7. The defence examined are DWs' 1 and 2.

4. The version advanced by the defence is that the signed blank cheque along with the diary was missing from the

C.M.P. party office. It is submitted that the accused is an active worker of the C.M.P. According to him, he got reliable information that the diary and the cheque was taken away by one Kerala Kumar which was kept in the C.M.P. office and the above person misused the cheque to borrow money. The accused approached PW1 and other party workers. After enquiry, they realised that the above said Kerala Kumar happened to be involved in another case and he was in the Central Jail, Thiruvananthapuram. But, when he was released, he left the place. Evidently, the accused had not taken any steps to get back the cheque. He has not filed any complaint before the police or to any authorities. He had sent a registered notice to the complainant as admitted by PW1 but he has not produced the same nor was any evidence adduced in this regard. PW1 has testified with respect to the execution of the cheque and PW3 an independent witness has supported the complainant. PW2, the bank manager, has produced the documents with respect to the dishonour of the cheque for want of funds in the account of the accused. The evidence of PW1 was also supported by the

documents produced in the matter.

5. In the circumstances, I find that the evidence of DWs' 1 and 2 said to be C.M.P. party activists was examined meticulously by the courts below and discarded as unreliable. I find no reasons to interfere in the findings of the court below in exercise of the revisional jurisdiction of this court as the matter is exclusively in the relum of appreciation of evidence. The conviction and sentence is confirmed.

The revision petition is dismissed.

K.R.UDAYABHANU,
JUDGE

csl